

ORDINANCE NO. 05-02-363

AN ORDINANCE AUTHORIZING AND EMPOWERING COUNTY COMMISSIONERS OF FREDERICK COUNTY TO ISSUE, SELL AND DELIVER, AT ANY ONE TIME OR FROM TIME TO TIME, ITS TAX INCREMENT FINANCING BONDS IN ONE OR MORE SERIES AND IN A PRINCIPAL AMOUNT NOT TO EXCEED \$325,000 TO BE KNOWN AS "FREDERICK COUNTY, MARYLAND, TAX INCREMENT FINANCING BONDS, SERIES 2005 (DUDROW INDUSTRIAL PARK LOT THREE DEVELOPMENT DISTRICT) SERIES 2005 PURSUANT TO THE PROVISIONS OF THE TAX INCREMENT FINANCING ACT, CONSISTING OF SECTIONS 14-201 THROUGH 14-214 OF ARTICLE 41 OF THE ANNOTATED CODE OF MARYLAND (2003 REPLACEMENT VOLUME AND 2004 SUPPLEMENT), AS AMENDED, FOR THE SOLE AND EXCLUSIVE PURPOSES DESCRIBED IN THIS ORDINANCE; APPROVING, PURSUANT TO NOTICE AND FOLLOWING A PUBLIC HEARING, THE ISSUANCE OF THE BONDS REQUESTED IN THE LETTER OF INTENT FROM ADVANCED BIOSOLUTIONS, INC. (NOW KNOWN AS EMERGENT BIOLOGICS INC.) TO COUNTY COMMISSIONERS OF FREDERICK COUNTY DATED SEPTEMBER 23, 2004; MAKING CERTAIN LEGISLATIVE FINDINGS, AMONG OTHERS, CONCERNING THE PUBLIC BENEFIT AND PURPOSE OF SUCH BONDS; PROVIDING THAT SUCH BONDS AND THE PRINCIPAL, INTEREST OR PENALTIES THEREON SHALL BE SPECIAL OBLIGATIONS OF COUNTY COMMISSIONERS OF FREDERICK COUNTY REPAYABLE SOLELY FROM TAX REVENUES OF THE COUNTY ALLOCATED AND PAID TO A SPECIAL FUND HERETOFORE CREATED BY THE COUNTY FOR SUCH PURPOSE, AND CERTAIN OTHER MONEYS WHICH MAY BE AVAILABLE FOR SUCH PURPOSE, AND THAT NEITHER SUCH BONDS NOR THE PRINCIPAL INTEREST OR PENALTIES THEREON SHALL EVER CONSTITUTE AN INDEBTEDNESS OR A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWERS OF COUNTY COMMISSIONERS OF FREDERICK COUNTY WITHIN THE MEANING OF ANY CONSTITUTIONAL OR CHARTER PROVISION OR STATUTORY LIMITATION AND THAT NEITHER SHALL EVER CONSTITUTE OR GIVE RISE TO ANY PECUNIARY LIABILITY OF COUNTY COMMISSIONERS OF FREDERICK COUNTY; AUTHORIZING AND EMPOWERING THE PRESIDENT OF THE BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, PRIOR TO THE ISSUANCE, SALE AND DELIVERY OF SUCH BONDS, TO PRESCRIBE THE FORM, TENOR, TERMS AND CONDITIONS OF AND SECURITY FOR SUCH BONDS, AND TO PRESCRIBE, DETERMINE, PROVIDE FOR AND APPROVE VARIOUS OTHER MATTERS, DETAILS, DOCUMENTS AND PROCEDURES IN CONNECTION WITH

THE AUTHORIZATION, ISSUANCE, SECURITY, SALE AND PAYMENT FOR SUCH BONDS; AND GENERALLY PROVIDING FOR AND DETERMINING VARIOUS MATTERS AND DETAILS IN CONNECTION WITH THE AUTHORIZATION, ISSUANCE, SECURITY, SALE AND PAYMENT OF SUCH BONDS.

R E C I T A L S

Under the provisions of the Tax Increment Financing Act, consisting of Sections 14-201 through 14-214 of Article 41 of the Annotated Code of Maryland, as amended (the "Act"), any Maryland county may borrow money by issuing and selling bonds for the purpose of financing the development, including new development, redevelopment, revitalization, and renovation, of an industrial, commercial, or residential area. The bonds authorized by the Act may be special obligations of the county payable from a special fund created by the county for the purpose of paying the debt service on the bonds and from other assets or revenues pledged by a county for that purpose.

County Commissioners of Frederick County, a body politic and corporate and a political subdivision of the State of Maryland (the "County"), is one of the counties of Maryland which is authorized to issue bonds under the Act. Before issuing those bonds, the Board of County Commissioners of Frederick County (the "Board") is required to designate a contiguous area within Frederick County as a "development district" and to pledge that it will allocate a portion of real property taxes derived from the development district to the special fund for the payment of the debt service on the bonds issued under the Act. The portion of the real property taxes to be so allocated is all or any portion of the amount derived from the incremental increase of the assessable base of the development district over the original assessable base of the development district as of the date specified in the Act.

By Resolution No. 04-38 adopted on October 5, 2004, pursuant to the Act (the "Resolution"), the Board created a development district in order to encourage and promote the development, including the new development, redevelopment, revitalization, and renovation, of a contiguous industrial and commercial area within the County known as the "Dudrow Industrial Lot Three Development District" (the "Development District") which is described in the Resolution and a special fund known as the "Dudrow Industrial Lot Three Development District Special Fund" (the "Special Fund"). The County further determined by the Resolution to apply the incremental real property tax revenues and the proceeds of any bonds issued under the Act to provide facilities for the benefit of an industrial and commercial area within the Development District (the "Project").

The creation of the Development District and the issuance of bonds under the Act will serve the public purposes of providing public improvements within the County, directly and indirectly enhancing the taxable base of the County, encouraging the development of commerce and industry within the County, and increasing employment within the County through the installation of utilities and other necessary improvements

for the Development District, including streets and roads to, from, or within the Development District, parking, lighting, and other facilities.

The Project will consist of acquisition of a pedestrian easement through a portion of the Development District to access recreational land previously acquired by the County and site development and clearing, grading, paving of roads and parking and installation of streets and roads, utilities, fencing, parking and lighting and other facilities in or about the Development District.

The County has received a letter dated September 23, 2004 (the "Letter of Intent") from Advanced Biosolutions, Inc., now known as Emergent BioLogics Inc., a Maryland corporation ("Emergent"), in which it is requested that the County participate in the financing of the Project as described herein. A portion of the Development District will be used by Emergent as a biotechnology manufacturing center.

The County, based upon the findings and determinations set forth below, has determined to finance the cost of the Project (to the fullest extent permitted by the Act) by the issuance, sale, and delivery, at any time or from time to time and in one or more series, of its bonds in an aggregate principal amount not to exceed \$325,000 and at a maximum annual rate of interest not to exceed 6.625% (the "Bonds") and to enter into one or more agreements with the owner or owners of the real property within the Development District (collectively, the "Development Agreement") specifying certain obligations of the owner or owners of that property with respect to the Project. Emergent and the County will enter into a Development Agreement relating to the Project.

The Bonds issued pursuant to this Ordinance will not be general obligations of the County, but will be special obligations of the County payable solely from real property tax revenues of the County allocated and paid into the Special Fund, and certain other monies which may be made available for such purpose. Neither the Bonds nor the principal, interest or penalties thereon shall ever constitute an indebtedness or a charge against the general credit or taxing powers of the County within the meaning of any constitutional or charter provision of statutory limitation and that neither shall ever constitute or give rise to any pecuniary liability of the County.

Pursuant to Section 14-210 of the Act, the Board may implement its authority under the Act to issue its bonds, notes, or other similar instruments for the purpose of financing the costs of the Project and certain related costs of issuing the bonds, notes, or other similar instruments by enacting an ordinance which specifies and describes the proposed undertaking and states that it has complied with certain conditions precedent to the issuance of the obligations, specifies the maximum principal amount of the obligations to be issued, and specifies the maximum rate or rates of interest the obligations are to bear.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY:

Section 1. Acting pursuant to the Act and the Resolution, it is hereby found and determined as follows:

(1) The creation of the Development District in Frederick County and the issuance of bonds under the Act will serve the public purposes of providing public improvements within the County, directly and indirectly enhancing the taxable base of the County, encouraging the development of commerce and industry within the County, and increasing employment within the County through the installation of utilities and other necessary improvements in the Development District including pedestrian easements through a portion of the Development District, streets and roads, utilities, parking, lighting, and other facilities in, on or about the Development District;

(2) By the adoption of the Resolution and the enactment of this Ordinance, the County has complied and will comply with the conditions precedent to the issuance of bonds under the Act by designating the Development District, creating the Special Fund, pledging that the portion of the real property taxes representing the levy on the "Tax Increment" (within the meaning of the Act and the Resolution) shall be paid into the Special Fund, and enacting this Ordinance which specifies the maximum principal amount of the bonds to be issued and the maximum rate or rates of interest the bonds are to bear;

(3) The Bonds will not be general obligations of the County and may not be secured by a pledge of the full faith and credit and unlimited taxing power of the County. The Bonds will be special obligations of the County payable solely from the real property tax revenues of the County allocated and paid into the Special Fund and certain other monies which may be made available for such purpose. Neither the Bonds nor the principal, interest or penalties thereon shall ever constitute an indebtedness or a charge against the general credit or taxing powers of County within the meaning of any constitutional or charter provision of statutory limitation and that neither shall ever constitute or give rise to any pecuniary liability of County;

(4) Issuance of the Bonds satisfies the County's "local match" requirement in connection with a \$2,500,000 Conditional Loan by the Maryland Department of Business and Economic Development to Emergent. Creation of the Development District, issuance of the Bonds and payment of debt service on the Bonds with the Tax Increment as hereafter defined serves the public purpose of creating jobs and other economic opportunities in the County thereby measurably increasing the resources of the community and its financial well being and generating substantial additional tax revenue over time, all without adversely effecting existing tax revenues. The local match facilitates a significant State contribution to the Project. The principal amount of the Bond is intended to (a) fund the "local match" in the amount of \$250,000, and (b) pay for costs related to the issuance of the Bond. Any amounts remaining after payment of (a) and (b) above, may be applied to prepayment of the Bond.

Section 2. Subject to the provisions of the Resolution and this Ordinance, the County may issue, sell, and deliver the Bonds as special obligations of the County, at any time or from time to time and in one or more series, in an aggregate principal amount not to exceed \$325,000, and the annual rate of interest which any bond bears may not exceed 6.625%. The principal of, premium, if any, and interest on the Bonds shall be payable solely from amounts of real property tax revenues of the County allocated and paid into the Special Fund and certain other monies which may be made available for such purpose.

Section 3. The County shall use the proceeds of the Bonds of any series for the purpose of financing the costs (to the fullest extent permitted by the Act) of the Project.

Section 4. Any Development Agreement entered into with respect to the Bonds of any series shall require that (1) the proceeds of the Bonds of such series be used solely to finance the costs (to the fullest extent permitted by the Act) of the Project and (2) the owner or owners of the real property located within the Development District must pay their tax bills by September 30 of each year.

Section 5. *Neither the Bonds of any series nor the interest thereon shall ever constitute a pledge of the full faith and credit of the County and neither shall ever constitute or give rise to any pecuniary liability of the County or the City.*

Section 6. The Bonds shall be designated "Frederick County, Maryland, Tax Increment Financing Bonds (Dudrow Industrial Park Lot Three Development District) Series 2005" which designation may be added to or amended by the President of the Board in the Written Order hereafter referred to.

Section 7. The Bonds shall be executed in the name of the County and on its behalf by the President or the Vice President of the Board, by his or her manual or facsimile signature, and the corporate seal of the County or a facsimile thereof shall be impressed or otherwise reproduced thereon by the County Manager of the County.

Section 8. The Development Agreement and, where applicable, all other documents as the President or the Vice President of the Board deems necessary to effectuate the issuance, sale, and delivery of the Bonds of any series, shall be executed in the name of the County and on its behalf by the President or the Vice President of the Board by his or her manual signature, and the corporate seal of the County or a facsimile thereof shall be impressed or otherwise reproduced thereon by the County Manager of the County.

Section 9. If any officer whose signature or countersignature or a facsimile of whose signature or countersignature appears on the Bonds of any series or any of the aforesaid documents ceases to be such officer before the delivery of the Bonds of such series or any of the other aforesaid documents, such signature or countersignature or such

facsimile shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery.

Section 10. The President or the Vice President of the Board, the Treasurer, the Director of Finance and the County Manager of the County, and all other officials of the County are hereby authorized and empowered to do all such acts and things and to execute such documents and certificates as the President or the Vice President of the Board may determine to be necessary to carry out and to comply with the provisions of the Act, the Resolution, and this Ordinance, subject to the limitations set forth in the Act, the Resolution, and this Ordinance.

Section 11. As permitted by the Act, the Bonds of any series shall be sold at private (negotiated) sale at par, and the Bonds of such series shall be sold in such manner and upon such terms as the President or the Vice President of the Board deem to be in the best interests of the County.

Section 12. Prior to the issuance, sale, and delivery of the Bonds of any series, the President or the Vice President of the Board, by Written Order (the "Written Order"):

(1) shall prescribe the form, tenor, terms, conditions and designation of and the security for the Bonds of such series;

(2) shall prescribe the principal amounts (not to exceed the aggregate amount specified in this Ordinance), rate or rates of interest (within the limits specified in this Ordinance), denominations, date, and maturity or maturities (within the limits prescribed in the Act), the time and place or places of payment of the Bonds of such series, and the terms and conditions and details under which the Bonds of such series may be called for redemption prior to their stated maturities;

(3) if necessary, may appoint a servicer, trustee, a bond registrar, or a paying agent or agents, which may be a bank or trust company within or outside the State of Maryland, for the Bonds of such series;

(4) shall approve the form and contents of a Development Agreement and such other documents, including (without limitation) trust agreements, assignments, mortgages, deeds of trust, and security instruments, to which the County shall be a party and which may be necessary to effectuate the issuance, sale, and delivery of the Bonds of such series;

(5) may prepare and distribute, in conjunction with representatives of the owner or owners of the real property located within the Development District and any prospective purchasers of or underwriters for the Bonds of any series, both a preliminary and a final official statement, private placement memorandum, limited offering memorandum, or other similar document in connection, with the offering and sale of the Bonds of any series, if such preliminary and final official statement, private placement

memorandum, limited offering memorandum, or other similar document are determined to be necessary or desirable for the offering and sale of the Bonds of such series in order to comply with applicable Federal and state securities laws;

(6) may execute and deliver a contract or contracts for the purchase and sale of the Bonds of any series (or any portion thereof) in form and content satisfactory to the President or the Vice President of the Board;

(7) shall determine the time of execution, issuance, sale, and delivery of the Bonds of such series and shall prescribe any and all other details of the Bonds of such series;

(8) shall determine the method, and shall approve the terms, of the sale of the Bonds of such series, as provided in the Resolution and this Ordinance;

(9) shall provide for the payment of all costs, fees, and expenses incurred by or on behalf of the County in connection with the issuance, sale, and delivery of the Bonds of such series, including (without limitation) costs of printing (if any) and issuing the Bonds of such series, legal expenses (including the fees of bond counsel), trustee fees, accounting fees, and compensation to any person in connection with the issuance of the Bonds;

(10) may provide for the issuance and sale (subject to the passage at the time of any appropriate resolution or ordinance authorizing the same) of one or more series of additional bonds and one or more series of refunding bonds;

(11) may provide for the funding of sinking funds or reserves for the Bonds of such series and for the funding of the payment of interest on the Bonds of such series in such amounts, or for such period, as the President or the Vice President of the Board deems reasonable;

(12) may provide insurance for the payment of the principal of and interest on the Bonds of any series under an insurance agreement approved by the President or the Vice President of the Board, or may provide for such payment under a letter or credit, guaranty, line of credit, or similar credit support agreement approved by the President or the Vice President of the Board;

(13) to the extent that other obligated persons with respect to the Bonds of any series have not assured compliance with, or to the extent that the offering of the series of Bonds is not exempt from the requirements of, Rule 15c2-12 of the United States Securities and Exchange Commission, shall determine the form and contents of any written agreement or contract required by law for the benefit of the holders of any series of the Bonds under which agreement or contract the County will undertake to provide annual financial information, audited financial statements, material events notices, and other information to the extent required by such Rule;

(14) in accordance with Section 14-208 of the Act, may prescribe that the use of moneys in the Special Fund in excess of the unpaid debt service on the Bonds in any fiscal year shall be restricted to certain purposes so as to prohibit their use for other purposes, or may prohibit certain uses of such excess; and

(15) specify and prescribe any and all things necessary, proper, or expedient in connection with the issuance, sale, and delivery of the Bonds of such series and in order to accomplish the legislative intent of the Act and the public purposes of the Resolution and this Ordinance, subject to the limitations set forth in the Act and any limitations prescribed by the Resolution and this Ordinance.

Section 13. All actions heretofore taken by any officer of the County in connection with the transactions contemplated by or otherwise referred to in this Ordinance be, and they hereby are, ratified, approved, and confirmed in all respects.

Section 14. For purposes of this Section 14, the following words shall have the following meanings:

"Actual Incremental Taxes" means the actual amount of increased taxes resulting from the Tax Increment payable on the Property by the Property Owner.

"Original Assessable Base" ("OAB") means \$773,600, the assessable base of the Development District as of January 1, 2003.

"Base Taxes" means taxes produced by a levy of the annual tax rate upon the OAB.

"Excluded Taxes" means any taxes other than those taxes which would be payable to the County. Excluded Taxes also include, without limitation, Base Taxes, real estate taxes payable to the State of Maryland, any local city, municipality, school, fire or other district and any other taxes other than those payable to the County. Fire District taxes which may currently or hereafter be assessed against the Property payable to the County shall be deemed Excluded Taxes.

"Tax Increment" means that amount by which the revised assessable base exceeds the OAB.

(a) The Special Fund created by Section 5 of the Resolution shall be held either by the County or on behalf of the County by Mercantile Potomac Bank (the "Servicer). Either the County or the Servicer shall deposit to the Special Fund all or a portion of Actual Incremental Taxes, less Excluded Taxes at such time and in such manner as shall be set forth in a Servicing Agreement between the County, the Servicer, Emergent and the purchaser of the Bond. The County does hereby grant, bargain, sell, convey, pledge and assign to the Owner of the Bond all right, title and interest of the

County in and to and grants to the owner of the Bond a security interest in, the Special Fund and monies deposited therein, including investment earnings thereon.

Section 15. The President or the Vice President of the Board or the Director of Finance shall be responsible for the execution and delivery of a certificate of the County which complies with the requirements of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"), and the applicable regulations thereunder and counsel rendering an opinion on the validity of the Bonds on the date of the issuance of the Bonds ("Bond Counsel").

The County shall set forth in said certificate its reasonable expectations as to relevant facts, estimates and circumstances relating to the use of the proceeds of the Bond, or of any moneys, securities or other obligations which may be deemed to be proceeds of the Bond pursuant to Section 148 of the Code or the said regulations (collectively, the "Bond Proceeds"). The County covenants with the holder of the Bond that the facts, estimates and circumstances set forth in the said certificate will be based on the County's reasonable expectations on the date of issuance of the Bond and will be, to the best of the knowledge of the person executing such certificate, true, correct and complete as of that date.

The County covenants with the holder of the Bond that it will not use, or permit the use of any of, the Bond Proceeds or any other funds of the County, directly or indirectly, to acquire any securities or obligations, and will not take or permit to be taken or fail to take any other action or actions which would cause the Bond to be an "arbitrage bond" within the meaning of said Section 148 and said regulations or that would otherwise cause the interest on the Bond to be includable in gross income of the holder of the Bond for federal income tax purposes.

The County further covenants that it will comply with said Section 148 and said regulations and such other requirements of the Code which are applicable to the Bond on the date of issuance of the Bond and which may subsequently lawfully be made applicable to the Bond.

The County will hold and shall invest Bond Proceeds within its control (if such proceeds are invested) in accordance with the expectations of the County set forth in said certificate.

The County shall make timely payment of any rebate amount or payment in lieu thereof (or installment thereof) required to be paid to the United States of America in order to preserve the exclusion from gross income for purposes of federal income taxation of interest on the Bonds and shall include with any such payment such other documents, certificates or statements as shall be required to be included therewith under then applicable law and regulations.

The President or the Vice-President of the Board or the Director of Finance may execute a certificate or certificates supplementing or amending said certificate, and actions taken by the County subsequent to the execution of such certificate shall be in accordance with said certificate as amended or supplemented; provided, however, that the County shall execute any such certificate only upon receipt by it of an opinion of Bond Counsel addressed to the County to the effect that actions taken by the County in accordance with the amending or supplementing certificate will not adversely affect the exclusion from gross income for federal income taxation purposes of interest on the Bond.


Section 16. The County hereby covenants with the owner from time to time of the Bond that it shall not take or cause to be taken any action or fail to take any action, the taking of which or the omission of which, under the law existing on the date of issuance of the Bond, or which may subsequently lawfully be made applicable to the Bond, would cause the interest on the Bond to become subject to federal income taxation.

Section 17. The provisions of this Ordinance are severable, and if any provision, sentence, clause, section or part hereof is held illegal, invalid or unconstitutional or inapplicable to any person or circumstances, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or parts of this Ordinance or their application to other persons or circumstances and the remaining provisions shall be construed so as to give practical realization to the public purposes intended to be achieved hereunder and the protection against pecuniary liability to be afforded to the County. It is hereby declared to be the legislative intent that this Ordinance would have been passed if such illegal, invalid or unconstitutional provision, sentence, clause, section or part had not been included herein, and if the person or circumstances to which this Ordinance or any part hereof are inapplicable had been specifically exempted herefrom.

Section 18. This Ordinance shall take effect on the date of its enactment by the Board.


ENACTED this 1st day of March, 2005.

ATTEST:



Douglas D. Browning
County Manager

COUNTY COMMISSIONERS OF
FREDERICK COUNTY

By: 

John L. Thompson, Jr., President
Board of County Commissioners
of Frederick County